

Introduced by Senator Figueroa

December 2, 2002

Senate Joint Resolution No. 2—Relative to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SJR 2, as introduced, Figueroa. Privacy.

This measure would respectfully request that the Congress of the United States exempt from preemption any state privacy law that provides greater protection to consumers than is, or will be, provided by federal law.

Fiscal committee: no.

- 1 WHEREAS, It is the primary responsibility of the state to
2 provide for the health, safety, and general welfare of its citizens;
3 and
4 WHEREAS, In California, this duty extends to the protection
5 of individual privacy rights; and
6 WHEREAS, Specifically, Section 1 of Article I of the
7 California Constitution guarantees its citizens an inalienable right
8 to privacy; and
9 WHEREAS, In protecting this right, the state has enacted
10 legislation in relation to privacy and similar issues, including, but
11 not limited to, telemarketing and financial privacy, medical
12 records, social security numbers, and the Internet; and
13 WHEREAS, Unfortunately, as to those provisions that are more
14 protective of consumer rights, they are, many times, preempted by
15 less restrictive federal provisions; and
16 WHEREAS, The solution to this problem is to memorialize the
17 Congress of the United States, when enacting legislation in regards



1 to privacy, to include provisions that exempt more stringent state
2 laws from federal preemption; and

3 WHEREAS, This solution is not a radical one, as the principle
4 of states' rights has been espoused by important figures since the
5 conception of the United States, such as by the framers of the
6 Constitution of the United States, various presidents and justices,
7 and the people alike; and

8 WHEREAS, For instance, our founding fathers preserved
9 states' rights by including the Tenth Amendment in the Bill of
10 Rights; and

11 WHEREAS, In relation, the great Ronald Reagan once stated:
12 "All of us need to be reminded that the Federal Government did
13 not create the States; the States created the Federal Government";
14 and

15 WHEREAS, Moreover, a recent United States Supreme Court
16 decision, *Federal Maritime Comm. v. South Carolina State Ports*
17 *Auth.* (2002) 535 U.S. 743, provides in pertinent part: "States,
18 upon ratification of the Constitution, did not consent to become
19 mere appendages of the Federal Government. Rather, they entered
20 the Union with their sovereignty intact"; and

21 WHEREAS, Congress has an opportunity to advance the
22 premise that, indeed, the states are not mere appendages of the
23 federal government, but, rather, are justified in protecting the
24 inalienable rights of its citizenry; and

25 WHEREAS, We note that this opportunity may soon avail itself,
26 as the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq.,
27 prevents states from imposing any requirement or prohibition with
28 respect to certain provisions of that act, unless that requirement or
29 prohibition gives greater protection to consumers and is enacted
30 after January 1, 2004; now, therefore, be it

31 *Resolved by the Senate and Assembly of the State of California,*
32 *jointly,* That the Legislature of the State of California respectfully
33 requests that the Congress of the United States exempt from
34 preemption any state privacy law that provides greater protection
35 to consumers than is, or will be, provided by federal law; and be
36 it further

37 *Resolved,* That the Secretary of the Senate transmit copies of
38 this resolution to the President and Vice President of the United
39 States, to the Speaker of the House of Representatives, and to each



- 1 Senator and Representative from California in the Congress of the
- 2 United States.

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